

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN THE MATTER OF THE
EXTRADITION OF:
LUIS SILVA-PERALTA

Case No.: 15-MJ-3444-WVG

**CERTIFICATION OF
EXTRADITABILITY AND ORDER
OF COMMITMENT**

In this proceeding under 18 U.S.C. § 3184, the United Mexican States (“Mexico”), through the United States Government (“the Government”), request the extradition of Luis Silva-Peralta under the provisions of the Extradition Treaty between the United States of America and Mexico, May 4, 1978 (“Treaty”). Mexico seeks to extradite Silva to answer to a charge of Aggravated Homicide by Advantage. For the reasons set forth below, the Court **GRANTS** the request for extradition and **CERTIFIES** Silva as extraditable.

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I. BACKGROUND

A. Procedural History

On November 20, 2015, the Government, on behalf of Mexico, filed a Complaint for Provisional Arrest With a View Towards Extradition against Silva. (Doc. No. 1.) The Honorable Mitchell D. Dembin, United States Magistrate Judge, issued an arrest warrant on the same day. (Doc. No. 2.) Silva, a legal resident of the United States, was arrested on February 19, 2016 and made an initial appearance before this Court on February 22, 2016. (Doc. Nos. 2-4.) The Court held a status hearing on February 26, 2016 to determine whether Silva should be held in custody pending resolution of extradition proceedings. (Doc. No. 7.) Soon thereafter, on March 9, 2016, the Court issued an order detaining Silva without prejudice. (Doc. No. 9.) The Court held an additional status hearing on April 21, 2016, during which an extradition hearing was scheduled for May 5, 2016. (Doc. No. 10.) On May 4, 2016, the United States filed Mexico's formal request for extradition, made to the U.S. Department of State and supported by documentary evidence. (Doc. Nos. 11-13.)

At the hearing on May 5, 2016, Silva asked the Court to represent himself and remove appointed counsel. (Doc. No. 14.) Subsequently, during a status hearing on May 31, 2016, Silva requested a competency hearing. (Doc. No. 17.) On June 16, 2016, the parties submitted a Joint Memorandum regarding Silva's right to counsel and his request for a competency evaluation. (Doc. No. 19.) The Court held another status hearing on July 11, 2016, and shortly thereafter, on August 2, 2016, issued an Order denying both the request to proceed pro se and the request for a mental evaluation. (Doc. No. 36.)

In the meantime, the United States filed its Memorandum of Law in Support of Mexico's Request for Extradition and supplemental briefing on May 27, 2016, and July 6, 2016, respectively. (Doc. Nos. 16, 22.) Silva filed his Response and Opposition to the Government's Extradition Request on August 15, 2016. (Doc. No. 37.) The United States filed its Reply on August 22, 2016. (Doc. No. 38.) The extradition hearing was held on

1 August 31, 2016 before the undersigned, at which time the matter was taken under
2 submission. (Doc. No. 39.)

3 B. The Request for Extradition

4 Mexico seeks to extradite Silva to answer to the charge of Aggravated Homicide by
5 Advantage, which allegedly occurred on February 13, 2012 in violation of Articles 123,
6 126, 147, and 148 of Section II of the Penal Code of Baja California State, Mexico (“Baja
7 Penal Code”). (Doc. No. 31.)

8 The evidence submitted in support of the extradition request consists of the
9 following eleven exhibits that accompany the sworn affidavit of Maria Ruiz Juarez, Agent
10 of the Federal Public Prosecutor:¹

- 11 (1) Arrest warrant dated May 2, 2013, issued for “Luis Silva Peralta,” in criminal
12 case 00692/2013 (also referred to as criminal case 00692/2013 NUC NO. 02-
13 2012-06722), of the index of the Judge of the Constitutional Control Court for
14 the Judiciary Branch of Mexicali, in the State of Baja California, for Silva’s
probable responsibility in the commission of the crime of aggravated
homicide due to unfair advantage;
- 15 (2) Extract of the texts of the legal provisions specifying the elements defining
16 the charged crime, penalty and those related to the statute of limitations;
- 17 (3) Certification dated August 9, 2013, by which the Preliminary Hearing Judge,
18 attested that the right to punish will lapse in 50 years, and the precise date on
which the statute of limitation shall run is May 2, 2063;
- 19 (4) Extract of the Notice record addressed to the Public Prosecutor, for probable
20 criminal events, dated February 19, 2012, signed the Agent of the Ministerial
Police in the State of Baja California;
- 21 (5) Extract of the Inspection Proceedings and Processing of the Crime Scene,
22 dated February 19, 2012, signed by the Agent of the Ministerial Police of the
23 State of Baja California;

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26 ¹ All of these documents were certified and authenticated on April 6, 2016 by Donald E.
27 Jacobson, Minister Counselor for Consular and Consulate Affairs of the United States.

- (6) Certificate of Autopsy from the Forensic Medical Service of the Judiciary Branch of Baja California, dated February 19, 2012, signed by the Expert in Forensic Medicine, Jesus Garcia Quevedo;
- (7) Extract of the Record of the Victim or Offended Party and Witnesses Interviews, dated February 20, 2012, signed by Ruben Nuñez Valenzuela;
- (8) Extract of the Investigation Report dated April 26, 2013, signed by Juan Ramon Armenta Cota, Agent of the Ministerial Police of the State of Baja California;
- (9) Extract of the Criminalistics Expert's record dated November 8, 2012, signed by Marco Antonio Palomares Alvarado;
- (10) Identification proceedings on photo array, dated February 20, 2012, by Ruben Nuñez Valenzuela;
- (11) Photograph of "Luis Silva Peralta."

Documentary Evidence ("Doc. Evid."), Exs. 1-11.

II. Legal Standards

A. Extradition: General Principles

Extradition from the United States is a diplomatic process that is initiated when a foreign nation requests extradition of an individual from the United States Department of State. Prasoprat v. Benov, 421 F.3d 1009, 1012 (9th Cir. 2005); Manta v. Chertoff, 518 F.3d 1134, 1140 (9th Cir. 2008). "After the request has been evaluated by the State Department to determine whether it is within the scope of the relevant extradition treaty, a United States Attorney . . . files a complaint in federal district court seeking an arrest warrant for the person sought to be extradited." Blaxland v. Commonwealth Dir. of Pub. Prosecutions, 323 F.3d 1198, 1207 (9th Cir. 2003). "A judge or magistrate judge must then hold an extradition hearing to determine if the evidence is sufficient to sustain the charge of extradition under the relevant treaty." Manta, 518 F.3d at 1140. "Extradition treaties are to be liberally construed so as to affect their purpose, that is, to surrender fugitives for

trial for their alleged offenses.” Valentine v. United States ex rel. Neidecker, 299 U.S. 5, 14 (1936).

The authority of a magistrate judge serving as an extradition judicial officer is limited to determining an individual’s eligibility to be extradited, which is done by ascertaining (1) whether the crime is an extraditable offense under the subject treaty and (2) whether probable cause exists to sustain the charge. Vo v. Benov, 447 F.3d 1235, 1237 (9th Cir. 2006). If the judge determines that these requisite elements have been met, the findings are incorporated into a certificate of extraditability. Id. The certificate is forwarded to the Department of State. The Secretary of State makes the ultimate decision on whether to surrender the individual to the requesting country. 18 U.S.C. § 3186.

B. The Extradition Hearing

An extradition proceeding is not a trial[.]” Emami v. United States Dist. Court, 834 F.2d 1444, 1452 (9th Cir. 1987). “The only purpose of the extradition hearing is for the magistrate judge to determine whether the crime is extraditable and whether there is probable cause to support the charge.” Prasoprat, 421 F.3d at 1014 (citation omitted). Thus, “discovery in an international extradition hearing is limited and lies within the discretion of the magistrate [judge].” U.S. v. Kraiselburd (In re Extradition of Kraiselburd), 786 F.2d 1395, 1399 (9th Cir. 1986). The Court’s role is “not [to] weigh conflicting evidence and make factual determinations but, rather, [to] determine [] only whether there is competent evidence to support the belief that the accused has committed the charged offense.” Quinn v. Robinson, 783 F.2d 776, 815 (9th Cir. 1986). “Because of the limited function of an extradition proceeding and the limited participation permitted of the fugitive, the order of the court does not reflect a consideration of all the merits of the case.” Hooker, 573 F.2d at 1368.

In order for the Court to find Silva is extraditable, the Government has to satisfy each of the following seven elements: (1) the Court has subject matter jurisdiction to

1 conduct the extradition proceedings; (2) the Court has personal jurisdiction over the
 2 individual sought; (3) a valid extradition treaty is in force between the United States and
 3 the requested state; (4) criminal charges are pending against the accused in the requested
 4 state; (5) the crime or crimes charged against the accused are encompassed within the
 5 extradition treaty; (6) probable cause exists that the accused committed the crime charged;
 6 and (7) the statute of limitations has not run. See 18 U.S.C. § 3184. The Court addresses
 7 each in turn below.

8 **III. DISCUSSION**

9 **A. Authority of Judicial Officer**

10 The authority of a magistrate judge to conduct extradition proceedings is provided
 11 by 18 U.S.C. § 3184, Ward v. Rutherford, 921 F.2d 286, 289 (D.C. Cir. 1990), and Criminal
 12 Local Rule 57.4(a)(3). Silva does not challenge the Court's authority over these
 13 proceedings. The Court has the authority to conduct these extradition proceedings.

14 **B. Jurisdiction Over the Individual Sought**

15 The Court has jurisdiction over the individual sought if he is before the Court. In re
 16 Pazienza, 619 F. Supp. 611, 616 (S.D.N.Y. 1985). Silva does not challenge the Court's
 17 jurisdiction over him, which the Court finds it has.

18 **C. Existence of a Treaty**

19 In determining whether the subject crime is an extraditable offense, the Court must
 20 find that an extradition treaty exists between the United States and Mexico. Vo, 447 F.3d
 21 at 1237 (citing 18 U.S.C. § 3184).

22 The Government has submitted a declaration from Ron B. Katwan, Attorney
 23 Adviser, U.S. Department of State, dated May 3, 2016, which establishes that the
 24 Extradition Treaty between the United States and Mexico, TIAS 9656, was signed on May
 25 4, 1978 and is presently in full force and effect. (Katwan Decl. ¶ 3, Doc. No. 11-1 at 2.)
 26 A copy of the Treaty is attached to the declaration. (See id. at 15-36.) Mr. Katwan's
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statement on this matter is entitled to deference. See Matter of Extradition of Mainero, 990 F. Supp. 1208, 1216 (S.D. Cal. 1997) (finding that State Department’s opinion on force and effect of treaty is entitled to deference). Moreover, Silva does not contest the existence of the Treaty. An extradition treaty exists between the United States and Mexico.

D. Criminal Charges Pending in Mexico

Next, there must be criminal charges pending against the accused in the requested state. 18 U.S.C. § 3184; see also Quinn, 783 F.2d at 782. The declaration of Ron B. Katwan, submitted by the Government on behalf of Mexico, confirms Mexico’s request to extradite Silva is for the purpose of answering to a pending charge of Aggravated Homicide by Advantage, pursuant to an arrest warrant issued by the Control Judge in Preliminary Proceedings for the Judicial District of Mexicali, Baja California, on May 2, 2013. See Diplomatic Note 01750. Moreover, the extradition request and attached documentary evidence sufficiently demonstrates this element, and Silva does not challenge it. Therefore, the Court finds there are criminal charges pending against Silva in Mexico.

E. Treaty Coverage

Next, the crime charged must be covered by the applicable extradition treaty in order for the subject crime to be an extraditable offense. Vo, 447 F.3d at 1237 (citing 18 U.S.C. § 3184). The Treaty sets forth the following with respect to “Extraditable Offenses”:

1.- Extradition shall take place, subject to this Treaty, for wilful acts which fall within any of the clauses of the Appendix and are punishable in accordance with the laws of both Contracting Parties by deprivation of liberty the maximum of which shall not be less than one year.

Treaty, art. 2, para. 1. (Doc. No. 11-1 at 20.) The crime charged, Aggravated Homicide by Advantage, is covered by the Treaty.

First, Article 126 specifies that the crime of aggravated homicide is punishable by imprisonment for 20 to 50 years. Additionally, the Katwan Declaration provides that “[t]he offense for which extradition is sought is punishable in accordance with the laws of both

1 contracting parties by deprivation of liberty for a period of at least one year, and is covered
 2 under Article 2 of Treaty.” (Katwan Decl. ¶ 5, Doc. No. 11-1 at 2.) Again, Mr. Katwan’s
 3 opinion is entitled to deference. See Kolovrat v. Oregon, 366 U.S. 187, 194 (1961) (stating
 4 that opinion of State Department on meaning given to treaty is given great weight).
 5 Consequently, because the maximum punishment for the offense with which Silva is
 6 charged is at least one year, the offense falls within the Treaty’s minimum temporal
 7 requirement.

8 Next, Article 2(1) of the Treaty also contains a dual criminality requirement. Under
 9 the principle of dual criminality, “no offense is extraditable unless it is criminal in both
 10 jurisdictions.” Caplan v. Vokes, 649 F.2d 1336, 1343 (9th Cir. 1981) (citing Collins v.
 11 Loisel, 259 U.S. 309, 312 (1922)). “It is well established that all the principle of dual
 12 criminality requires is that the particular acts alleged constitute a crime in both
 13 jurisdictions.” Emami, 834 F.2d at 1450. “The name by which the crime is described in
 14 the two countries need not be the same, nor need the scope of the liability for the crimes be
 15 either coextensive or the same in both countries.” Id. Instead, “dual criminality exists if
 16 the ‘essential character’ of the acts criminalized by the law of each country are the same
 17 and if the laws are ‘substantially analogous.’” Theron v. United States Marshal, 832 F.2d
 18 492, 496 (9th Cir. 1987), abrogated on other grounds by United States v. Wells, 519 U.S.
 19 482 (1997). In assessing dual criminality, the extradition magistrate judge may consider,
 20 in order of preference, similar criminal provisions of federal law, similar laws of the state
 21 in which the fugitive was found, and the law of the preponderance of the states. Id.

22 Here, the Government has satisfied the dual criminality requirement. In Mexico, the
 23 crime of Aggravated Homicide by Advantage is covered by Articles 123, 126, 147, and
 24 148 of Section II of the Baja Penal Code. Article 123 defines homicide as the following:
 25 “The crime of homicide is committed by whomever takes another’s life.” Baja Penal Code,
 26 art. 123. Article 147 defines aggravated homicide as the following: “It is understood that
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1 bodily injuries and homicide are aggravated when they are committed with malice
2 aforethought, unfair advantage, lying in wait or treachery.” Id. at art. 147.

3 In the United States, this crime is most analogous to the crimes of murder and
4 manslaughter under federal law. See 18 U.S.C. §§ 1111 (murder), 1112 (manslaughter).
5 Under 18 U.S.C. § 1111(a), murder is defined as “the unlawful killing of a human being
6 with malice aforethought.” 18 U.S.C. § 1111(a). Every murder executed by “poison, lying
7 in wait, or any other kind of willful, deliberate, malicious, and premeditated killing . . . or
8 perpetrated from a premeditated design unlawfully and maliciously to effect the death of
9 any human being other than him who is killed” is classified as murder in the first degree.
10 Id. Any other murder is classified as murder in the second degree. Id. The crime of
11 manslaughter is defined as “the unlawful killing of a human being without malice,” and is
12 of two kinds, voluntary or involuntary. 18 U.S.C. § 1112(a).

13 Moreover, Silva does not contest that the crime charged is covered by the Treaty.
14 The Court finds that the crime charged constitutes an extraditable offense under Article 2
15 of the Treaty.

16 F. Probable Cause

17 Next, the Court must determine whether probable cause exists to believe Silva
18 committed the charged offense in Mexico. Although Silva contends probable cause is
19 lacking, the Court finds probable cause exists for extradition purposes.

20 1. General Legal Standard and Standard of Evidence Admissibility

21 In an extradition proceeding, the central function of the magistrate judge is to
22 determine whether there is competent evidence to justify holding the accused to await trial
23 in the requesting state, and not to determine whether the evidence is sufficient to convict.
24 Collins, 259 U.S. at 316; Hooker, 573 F.2d at 1367. “The extradition proceeding . . . makes
25 no determination of guilt or innocence.” Valencia v. Limbs, 655 F.2d 195, 198 (9th Cir.
26 1981). Probable cause exists when there is “evidence sufficient to sustain the charge under
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1 the provisions of the proper treaty or convention.” VO, 447 F.3d at 1237 (citing 18 U.S.C.
 2 § 3184); see also Quinn, 783 F.2d at 791 (“Because the [magistrate judge’s] probable cause
 3 finding is thus not a finding of fact in the sense that the court has weighed the evidence and
 4 resolved disputed factual issues, it must be upheld if there is any competent evidence in the
 5 record to support it.”)

6 “Competent evidence to establish reasonable grounds [to believe the accused guilty]
 7 is not necessarily evidence competent to convict.” Fernandez v. Phillips, 268 U.S. 311,
 8 312 (1925). If the magistrate judge finds probable cause to sustain the charge, he or she
 9 “is required to certify the individual as extraditable to the Secretary of State.” Blaxland,
 10 323 F.3d at 1208.

11 The admissibility of evidence in extradition matters is controlled by 18 U.S.C.
 12 § 3190, not by State law, the Federal Rules of Evidence, nor the Federal Rules of Criminal
 13 Procedure. See Escobedo v. United States, 623 F.2d 1098, 1103 (5th Cir. 1980) (stating
 14 that section 3190, not state law, controls admissibility), Fed. R. Evid. 1101(d)(3); Fed. R.
 15 Crim. P. 1(a)(5)(A). As 18 U.S.C. § 3190 makes clear, “authentication is the only
 16 requirement for admissibility of evidence under general United States extradition law. Oen
 17 Yin-Choy, 858 F.2d at 1406; see also Zanzanian v. United States, 729 F.2d 624, 627 (9th
 18 Cir. 1984). The Supreme Court has held that extradition may be predicated entirely on the
 19 “unsworn statements of absent witnesses.” Collins, 259 U.S. at 317. Indeed, both sworn
 20 and unsworn statements contained in properly authenticated documents are permissible.
 21 Artukovic v. Rison, 784 F.2d 1354, 1356 (9th Cir. 1986). Additionally, hearsay evidence
 22 is permitted in extradition proceedings. Then v. Melendez, 92 F.3d 851, 855 (9th Cir.
 23 1996); Escobedo, 623 F.2d at 1102 n.10.

24 2. The Evidence The Government Has Presented Is Admissible

25 As long as there is no conflict with the provisions of the subject treaty, evidence that
 26 has been authenticated is admissible in extradition proceedings. Emami, 834 F.2d at 1451.

1 The Documentary Evidence submitted by the Government on behalf of Mexico was
2 properly authenticated, and Silva has not presented any argument or evidence to the
3 contrary. Mexico's request for extradition and the supporting documents comply with
4 Article 10 of the Treaty, which requires the Court to receive in evidence documents that
5 are certified by the principal "diplomatic or consular officer of the United States in
6 Mexico." Treaty, art. 10, para. 6. Therefore, under the general extradition law of the
7 United States and the provisions of the Treaty, all of the documents contained in the
8 Documentary Evidence submitted by the Government on behalf of Mexico are admissible
9 for purposes of this extradition proceeding.

10 3. The Government Has Satisfied the Probable Cause Requirement

11 The Court now turns to whether, under the totality of evidence Mexico has provided,
12 there is probable cause to believe Silva committed the charged offense, see Quinn, 783
13 F.3d at 787, and concludes that the Government has satisfied the probable cause
14 requirement.

15 a. Summary of Evidence Provided by Mexico

16 i. March 23, 2016 Maria Ruiz Affidavit

17 According to Maria Ruiz Juarez, an Agent of the Federal Public Prosecutor, an
18 investigation began on February 19, 2012. This investigation was initiated by a phone call
19 placed to the emergency number at the city hall of Mexicali, Baja California, reporting a
20 vehicle blocking access to the highway leading to San Felipe, Mexicali, and also reporting
21 a corpse lying next to the vehicle. Juarez's affidavit establishes that an arrest warrant was
22 issued on May 2, 2013 for Silva. The affidavit further recounts the details of the ensuing
23 investigation including statements from the record of Valenzuela. Ultimately, Juarez's
24 affidavit asserts that Silva is the person responsible for the commission of the crime of
25 Aggravated Homicide by Advantage and serves to strengthen Mexico's formal request for
26 extradition of Silva.

1 ii. Notice for Probable Criminal Events

2 According to Mexico's notification to the Public Prosecutor about an allegedly
3 criminal act, on February 19, 2012, a call came in to the emergency hotline of the
4 municipality of Mexicali Baja California, reporting that on San Felipe Road, Mexicali,
5 Baja California, a car was blocking access to the road, and a body was found approximately
6 one kilometer away from the car. See Doc. Evid., Ex. 4.

7 iii. Inspection Proceedings and Processing of the Crime Scene

8 The inspection proceedings and processing of the crime scene ascertain that police
9 assigned to the Attorney General Office of Baja California State responded to the scene on
10 February 19, 2012. See Doc. Evid., Ex. 5. Upon arriving at the scene, authorities found a
11 brown 1997 Ford Crown Victoria bearing California license plate number 3VIZ110. See
12 id. After further inspection of the scene, the police discovered the naked body of a woman
13 in the state of putrefaction. Id. Near the body were rocks of various sizes with reddish
14 brown stains, a sharp metal blade with no handle (seeming to belong to a knife) with
15 reddish brown stains and dirt, four tire tracks, and a black leather wallet. Id. The wallet
16 contained the following: (1) cash; (2) two photographs of a man, including one with a man
17 in military clothes; (3) a Visa debit card; (4) a Social Security card; (5) a Department of
18 Veterans Affairs identification card; (6) a California Driver's license; and (7) a United
19 States Permanent Resident Card. Id. All five cards found in the wallet were in the name
20 "Luis Silva Peralta." Id. The address listed on the driver's license was 1007 Scott Avenue,
21 El Centro, California, 92243. Id.

22 iv. Autopsy Report

23 The autopsy report issued on February 19, 2012 concluded that the cause of death
24 was traumatic brain injury. See Doc. Evid., Ex. 6. The report also observed that the body
25 displayed multiple stab wounds, cuts, and scrapes on the left lateral side of the neck, the
26 pectorals, and back of the left arm, as well as fractures of all facial bones. Id.

1 v. Criminalistics Expert Record

2 The criminalistics report of February 19, 2012 determined that the decedent had been
3 dead between four and seven days. See Doc. Evid., Ex. 9.

4 vi. Agent Cota Investigation Report

5 An investigation report issued on April 25, 2013 by Juan Ramon Armenta Cota,
6 Agent of the Ministerial Police of the State of Baja California, established that during the
7 investigation, the police learned the vehicle located at the scene of the crime was registered
8 to Silva Aristeo and Silva Angela (identified as Silva's parents). See Doc. Evid., Ex. 8.
9 The vehicle was registered at the same address found on Silva's drivers license. See id.

10 This report also notably disclosed that Silva last crossed into the United States from
11 Mexico on February 13, 2012, at 7:30 p.m., through the Calexico Port of Entry. See id.

12 vii. Record of the Ruben Nunez Valenzuela, the Witness

13 As detailed above, Valenzuela reported to authorities in Baja California because his
14 romantic partner was missing and he learned through a local newspaper that a female body
15 had been found. See Doc. Evid., Ex. 7. After being presented with photos, Valenzuela
16 recognized the body as his romantic partner. Id. Valenzuela told authorities he last saw
17 her get into a brown Crown Victoria at 7:30 a.m. on February 13, 2012. Id. He then
18 asserted that his partner routinely offered sexual services and he recognized the Crown
19 Victoria as a vehicle that solicited these services to others on numerous occasions. Id.
20 Valenzuela was able to describe the driver of the Crown Victoria as approximately 50 years
21 of age, with black-and-white peppered hair, among other features. Id. Valenzuela also
22 informed authorities that he had not seen the driver of the Crown Victoria again since the
23 morning of February 13, 2012. Id.

24 viii. Photo Identification

25 On February 20, 2012, Valenzuela appeared before the Public Prosecutor for a
26 photographic lineup viewing. Doc. Evid. Ex. 10. Authorities showed him a lineup
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1 consisting of five photos, and he identified the individual appearing in photograph number
2 four, which depicts Silva, as the driver of the brown Crown Victoria who picked up the
3 victim on the morning of February 13, 2012.

4 ix. Arrest Warrant

5 On May 2, 2013, an arrest warrant was issued by the Judge of the Constitutional
6 Control Court for the Judiciary Branch of Mexicali, in the State of Baja California for the
7 arrest of Luis Silva-Peralta for his probable responsibility in the commission of the crime
8 of Aggravated Homicide by Advantage. Doc. Evid., Ex. 1.

9 b. Silva's Contentions Regarding Probable Cause Generally

10 Silva contends the evidence provided by Mexico is insufficient to satisfy probable
11 cause. In this regard, Silva asserts the evidence presented merely establishes that he may
12 have been present near the crime scene. Silva states probable cause requires more than
13 "surmise or suspicion," and thus that his possible presence near the scene of the crime is
14 insufficient to meet the probable cause requirement.

15 c. Discussion

16 i. The Evidence Supplied by Mexico Supports a Finding of Probable
17 Cause.

18 The evidence supplied by Mexico is sufficient to support a finding of probable cause
19 that Silva committed the charged crime. The evidence in this case reveals that Valenzuela
20 saw the victim enter a brown Crown Victoria on February 13, 2012. See Doc. Evid., Ex.
21 7. Valenzuela was able to identify the driver of the Crown Victoria based on Valenzuela's
22 prior observations of Silva on various occasions when Silva solicited the victim's services.
23 Id. Six days after Valenzuela saw Silva pick up the victim, on February 19, 2012, the
24 victim was found dead near a landfill and in a state of decomposition. See Doc. Evid., Ex.
25 5. A criminalistics report found that the victim had likely been dead for 4-7 days. Doc.
26 Evid., Ex. 9. Near the body, authorities found several identification documents belonging
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1 to Silva as well as his Crown Victoria. See Doc. Evid., Ex. 5. During the investigation,
2 officers learned the Crown Victoria was registered to individuals later identified as Silva's
3 parents, who share the same address as Silva in El Centro, California. See Doc. Evid., Ex.
4 8. Furthermore, Silva was last known to have crossed into the United States from Mexico
5 on February 13, 2012, at 7:30 p.m., through the Calexico Port of Entry, which is the port
6 of entry nearest to El Centro. Id.

7 The above evidence goes beyond merely randomly placing Silva near the scene of
8 the crime. Silva was known to associate with the victim in the past—they were not
9 strangers—and Valenzuela had previously seen Silva transporting the victim in the same
10 car found abandoned at the crime scene. Moreover, Valenzuela saw Silva pick the victim
11 up on the day she disappeared, which was within the timeframe Mexican authorities believe
12 she had been killed. The evidence establishes the victim was familiar with Silva, he was
13 possibly the last person seen with the victim, the victim got into Silva's vehicle on the day
14 she was possibly murdered, Silva's identification documents and vehicle were found in a
15 remote area close to the victim's body, and that he quickly fled from Mexico. The evidence
16 above, taken together, paints a picture of Silva fleeing to the United States after he
17 committed the charged offense, leaving behind his car, wallet, Social Security card,
18 identification, and credit cards in his haste to flee the crime scene, victim, and murder
19 weapon.

20 Ultimately, the evidence above may or may not be sufficient to sustain a conviction,
21 but such is beyond the scope of the Court's role in the instant proceedings. Under the
22 totality of evidence Mexico has provided for the limited purpose of these extradition
23 proceedings, the Court finds there is probable cause to believe that Silva committed the
24 charged offense.

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1 4. The Evidence Establishes Silva is the Party Named in the Extradition
 2 Complaint

3 “At an extradition hearing, the court is required to determine whether the party
 4 before [it] is the party named in the extradition complaint.” Manta, 518 F.3d at 1143
 5 (citation omitted). “Whether the person before the court is the accused is part of the
 6 magistrate judge’s probable cause analysis.” Id. (citation omitted). There must be
 7 “competent proof” of identity. Id. “An identification based on a single photograph may
 8 be competent evidence of identity in an extradition proceeding.” Manta, 518 F.3d at 1145
 9 (citation omitted). “[T]he credibility of the reported identification is a matter committed
 10 to the magistrate [judge].” Id. at 1145 (citation omitted). There is no *per se* rule that
 11 specifies which identification procedures are competent for probable cause purposes.
 12 Quinn, 783 F.2d at 815. The Court’s function is simply to determine “whether there [i]s
 13 any evidence warranting the finding that there [i]s a reasonable ground to believe the
 14 accused guilty.” Mirchandani v. United States, 836 F.2d 1223, 1226 (9th Cir. 1988)
 15 (quoting Fernandez v. Phillips, 268 U.S. 311, 312 (1925)).

16 Silva (*i.e.*, the person named in the extradition request) is described as a male of
 17 Mexican descent, with a date of birth of January 24, 1960 (age 54), and a height of roughly
 18 5’11 inches. May 3, 2016 Ron B. Katwan Aff.; Diplomatic Note 01750. The Documentary
 19 Evidence includes a photograph, allegedly of Silva, chosen out of a photo lineup by witness
 20 Robert Nuñez Valenzuela (hereafter “Valenzuela”). Doc. Evid., Ex. 10. Silva challenges
 21 his identification by Valenzuela during Mexican law enforcement’s investigation of the
 22 murder of Rocio Kactzumen Lopez Gastelum (“the victim”).

23 a. Evidence of Identity Supplied by Mexico: Record of Valenzuela

24 According to the record of the witness, Valenzuela, dated February 20, 2012,
 25 Valenzuela learned through a local Baja newspaper that a woman’s body had been found
 26 on a roadway. See Doc. Evid., Ex. 7. When he saw this report, Valenzuela went to law
 27 enforcement authorities in Baja California because his romantic partner, the victim, had
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1 been missing since February 13, 2012. Id. After being presented with photographs of the
2 body found on the road leading to San Felipe, Mexicali, Baja California, Valenzuela
3 recognized it as the body of his romantic partner, the victim. Id. Valenzuela told law
4 enforcement authorities that he last saw the victim at 7:30 a.m. on February 13, 2012, when
5 he saw her get into a brown Crown Victoria with American license plates. Id. Valenzuela
6 was aware that the victim routinely offered sexual services, and he was familiar with the
7 place from where the victim usually offered such services. Id. On the morning of February
8 13, 2012, Valenzuela testified that had gone looking for the victim when he saw her get
9 into the brown Crown Victoria. Id. He recognized the brown Crown Victoria as a vehicle
10 that had solicited sexual services from the victim on several occasions. Id. He described
11 the driver of the brown Crown Victoria as approximately 50 years old and roughly 5'5
12 inches tall, among other characteristics, such as having black and white peppered hair. Id.
13 When presented with a photo line-up, Valenzuela identified Silva as the driver of the brown
14 Crown Victoria who picked up the victim on the morning of February 13, 2012. Id.
15 Valenzuela also informed authorities that he had not seen Silva again since that morning.
16 Id.

17 b. Silva's Contentions Regarding Valenzuela's Identification

18 Silva contends that the identification by Valenzuela must be questioned based on the
19 seven-day gap between the day the crime allegedly occurred and the day Valenzuela's
20 identification occurred. Silva further questions Valenzuela's identification because
21 Valenzuela described Silva as roughly 5'5 inches tall when in fact Silva is 5'11 inches tall.
22 In sum, Silva questions Valenzuela's ability to view the driver of the brown Crown Victoria
23 on the morning of February 13, 2012, as well as his ability to later accurately recite what
24 he saw that day.

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26 ///

1 c. Discussion

2 i. The Evidence Supplied by Mexico Establishes that Silva
3 was Sufficiently Identified.

4 Keeping in mind that issues of credibility are to be resolved at trial, not at the
5 extradition hearing, Bovio, 989 F.2d at 259, the Court finds Valenzuela's testimony
6 constitutes competent evidence that Silva is the individual wanted by Mexico for the
7 offense alleged in the extradition request.

8 The passage of one week between the day of the alleged crime and Valenzuela's
9 identification and Valenzuela's potential inability to accurately assess Silva's height are
10 only two of many factors the Court considers in determining whether a sufficient
11 identification has been made. In considering Valenzuela's testimony in conjunction with
12 the additional evidence and exhibits provided by Mexico, as well as the evidence contained
13 in the extradition papers, the identification of Silva was sufficient to satisfy the
14 requirements under the law in this Circuit as it relates to extradition. Valenzuela's
15 identification of Silva was reliable, as it was based on his familiarity with Silva after he
16 had seen Silva on multiple occasions in the past. This is not a case of an eye-witness
17 identification of someone the witness had seen only once before. Additionally, the Court's
18 own observation of Silva at the extradition hearing and comparison to the photograph in
19 the record (see Doc. Evid., Ex. 11) and age as reflected in the extradition request (age 54)
20 further establish his identity as the person sought for extradition.

21 The Court accordingly finds that the "Luis Silva-Peralta" named in the request for
22 extradition and the person brought before this Court on the Complaint for Extradition are
23 the same person. The Government has satisfied the identity requirement.

24 G. Statute of Limitation

25 Silva contends, pursuant to Article 7 of the Treaty, that extradition should be barred
26 because the lapse of time between the issuance of the arrest warrant and the commencement
27
28

1 of extradition proceedings violates the Sixth Amendment.² As argued in the Government’s
 2 reply brief, which the Court now adopts, lapse of time as that term is used in Article 7 of
 3 the Treaty is synonymous with and equivalent to the statute of limitations. See Clarey v.
 4 Gregg, 138 F.3d 764, 766 (9th Cir. 1998) (interpreting “lapse of time” to refer to the statute
 5 of limitations for the offense; “The object of Article 7 of the Treaty is to preclude
 6 extradition of a person whose prosecution in the United States would offend our national
 7 statute of limitations if he had committed his criminal conduct here”); see also Causbie
 8 Gullers v. Bejarano, 293 Fed. Appx. 488, 489 (9th Cir. 2008) (“For the [defendant] to be
 9 extraditable, the prosecution against her must fall within the statute of limitations according
 10 to the laws of both the ‘requesting party,’ i.e., Mexico, and the ‘requested party,’ i.e., the
 11 United States.”) (unpublished). Thus, the Courts looks to whether Silva’s prosecution is
 12 barred by the applicable statute of limitations.

13 1. Statute of Limitations Under Mexican Law

14 According to Baja Penal Code, article 114 BIS, which governs the statute of
 15 limitations for the charged crime, Mexico has timely charged Silva in accordance with the
 16 statute of limitations. The judicial order dated August 9, 2013, issued by the Control Judge
 17 for Preliminary Proceedings of the Judicial District of Mexicali, Baja California, states that
 18 according to Articles 114 and 114 BIS of the Baja Penal Code, the statute of limitations
 19 will expire in 50 years. Mexico brought charges against Silva well within that period. The
 20 Court accordingly finds that Mexico’s prosecution of Silva for Aggravated Homicide by
 21 Advantage is not time-barred under Mexican law.

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23
 24 ² The lapse of time in this cases does not implicate the Sixth Amendment. See United
 25 States v. Martinez, No. 14-5860, __F.3d__, *available at* 2016 WL 3632599, at 9, 2016
 26 U.S. App. LEXIS 12501, at 30 (6th Cir. July 9, 2016) (en banc) (holding that the “lapse
 27 of time” provision of the Treaty does not incorporate the speedy trial guarantee of the
 28 Sixth Amendment.)

2. Statute of Limitations Under United States Law

The crime of Aggravated Homicide by Advantage under Mexican law is most analogous to the crimes of murder and manslaughter in the United States. See 18 U.S.C. §§ 1111 (murder), 1112 (manslaughter). Because first-degree murder is punishable by death, charges may be brought at any time, without limitation. 18 U.S.C. § 3281. Second degree murder and manslaughter, both being non-capital offenses, are governed by the five-year statute of limitations in 18 U.S.C. § 3282(a).

“For purposes of applying statutes of limitation to requests for extradition . . . the period is generally calculated from the time of the alleged commission of the offense to the time of the warrant, arrest, indictment, or similar step in the requesting state, or of the filing of the request for extradition, whichever occurs first” Sainez v. Venables, 588 F.3d 713, 716 (9th Cir. 2009) (citation omitted). In an extradition proceeding, “a Mexican arrest warrant is the equivalent of a United States indictment and may toll the United States statute of limitations.” Id. at 717.

Here, the charged murder occurred on or about February 13, 2012, and Mexico issued an arrest warrant on May 2, 2013—well within the more restrictive five-year statute of limitations for second-degree murder and manslaughter. The Court accordingly finds that prosecution of the Aggravated Homicide by Advantage charge against Silva is not barred under United States law.

IV. CONCLUSION

In summary, the Court finds:

1. The undersigned judicial officer is authorized under Title 18, United States Code, Section 3184, to conduct an extradition hearing;

2. The Court has personal jurisdiction over the fugitive and subject matter jurisdiction over the case;

